

## **RE MARKS / ARGUMENTS**

Reconsideration of the above-identified application respectfully requested. The amendments to the claims are as follows:

- Claim 1: added parentheses to the step designations and characterized them as steps in order to facilitate language in dependent claims.
- Claim 2: deleted words having no antecedent basis.
- Claim 10: amended to change from product-by-process to a product claim with no change in scope.
- Claims 12, 18: added based on application a page 4, ll 10-15.
- Claim 13: added based on application at 4, ll. 1-4; page 5, 24-25; page 3, ll. 5-6.
- Claims 14, 17: added based on claims 6 and 7; application at page 5, ll. 9-12 and 24-25.
- Claims 15: added based on claims 5 and 8; application at page 5, ll. 17-24.
- Claims 16, 19, 20: added based on claim 2; application at page 3, ll 22-23.

No new matter is added by virtue of these claim amendments and newly presented claims, which define the invention according to Applicant. Accordingly, Applicants assert that no claims have been narrowed with the meaning of *Festo (Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 535 US 722, 112 S.Ct. 1831, 152 L.Ed.2d 944, 62 USPQ2d 1705 (2002))*. See also *Interactive Pictures Corp. v. Infinite Pictures Inc., 274 F.3d 1371, 61 USPQ 1152 (Fed. Cir. 2001)* (addition of the words "transform calculation" was not a narrowing amendment because that addition did nothing more than make express what had been implicit in the claim as originally worded).

Claims 1-11 stand rejected under the provisions of 35 U.S.C. § 103(a) as being unpatentable over Saleeb (U.S. Patent No. 4,664,920) in view of Hagiwara (U.S. Patent No. 5,445,920) in further view of Boskovic (U.S. Patent No. 5,124,162). Saleeb is cited for showing fixing water-soluble food ingredients, including juice solids, with magnesium salts including magnesium hydroxide. Hagiwara is cited as showing the use of a stabilizer when drying juice from plants. Boskovic is cited as showing the fixing of flavors with a carbohydrate film-former, such as gum arabic and spray drying the mixture. The combination, then, is alleged to show that it would have been obvious to use a gum in the process of Saleeb to assist in fixing the flavor as in Boskovic or as in Hagiwara to act as a thickener.

Applicant respectfully traverses the rejection and the grounds therefor.

### **Saleeb Citation**

Saleeb's only fixative is the magnesium salt. No other additives are proposed for assisting the magnesium salt, despite Saleeb's knowledge of acids, such as ascorbic acid

(Saleeb @ col. 1, ll. 47-49). Moreover, the amount of magnesium salt fixative is "at least 10% by weight" (claim 3 of Saleeb). The Examiner's reference to "4 to 30% by weight" magnesium salt fixative appears to come from Saleeb at page 3, ll. 5-7, which states, "The level of magnesium in the dry magnesium salt substrate will be from about 4 to 30% by weight." Thus, this range refers to the magnesium content of the magnesium salt and not the amount of magnesium salt used to fix the fruit. Finally, Saleeb teaches that his process "is accomplished without the addition of caloric carbohydrates." (Saleeb @ col. 3, ll. 16-18).

It is clear, therefore, that Saleeb's proposal for fixing fruit lacks an "organic acid component" and "a stabilizer", and relies on a greater amount (at least twice as much) of magnesium salt fixative. Saleeb, then, does not show or propose the present invention.

#### Hagiwara Citation

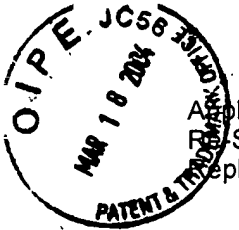
The Examiner cites Hagiwara as showing it known to use a stabilizer when drying juice from plants. Unsaid is that Hagiwara is only drying "plant green juice" and accomplishes this by increasing the pH of the plant green juice to be between 6 and 9.5. Thus, Hagiwara is not drying fruits in general and specifically is not drying cranberry, blueberry, bilberry, elderberry, chokeberry, or like fruits, as is the subject matter of the claims under examination. Moreover, Hagiwara's neutralizing agent is a "water-soluble alkaline naturally occurring mineral mixture obtained from an ashed product of any animal, plan or seaweeds" (Col. 2, ll. 18-20). Thus, Hagiwara only obtains his stabilized plant green juice from a water-soluble alkaline ash. Absent in Hagiwara is any proposal to use magnesium hydroxide, an organic acid component, and a stabilizer to fix fruit. Hagiwara, then, does not show or propose the present invention.

#### Boskovic Citation

The Examiner cites Boskovic as showing it known to fix flavors with a carbohydrate film former and to spray dry the mixture. The Examiner overlooks, however, Boskovic's express teaches that, "there are several classes of non-crystalline compounds which also appear to be unsuitable fixation media...such as gum arabic" (see col. 4, ll. 17-23). Examples 1-3 show such prior art unacceptable fixation agents, which include "gum arabic" (Example 3). Boskovic, then, expressly teaches away from the stabilizers taught to be useful in Applicant's invention, viz., guar gum and gum arabic (see, for example, claim 8). Boskovic, then, does not show or propose the present invention and, in fact, expressly teaches away from it.

#### Combination of Saleeb, Hagiwara, and Boskovic

Applicant is having a difficult time, at best, reconciling Saleeb that uses more magnesium salt than does Applicant and teaches away from using any organic acid component and from using any carbohydrate fixatives, with Hagiwara that only dries plant green juice using an



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alkaline ash, with Boskovic that expressly rejects Applicant's stabilizers. It seems to Applicant that these diverse teachings cannot be reconciled in general, and certainly cannot be reconciled to teach Applicant's invention in particular. Each of the references cited against the claims is trying to define over the other in terms of how to fix plant material. In point of fact, it only is Applicant that recognized that a combination of magnesium hydroxide in a restricted amount of less than 5% by weight, an organ acid component, and a fixative, can be used to advantage to fix fruit. As such, the invention clearly is patentable over the very strained combination structured to reject the claims.

Acceptance of the new power of attorney accompanying this paper also respectfully requested.

In view of the amendments and remarks submitted that all claims be allowed and that this application be passed to issuance.

Respectfully submitted,

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